

New Jersey Commissioner of Education

Final Decision

A.A.,

Petitioner,

v.

Board of Education of the Freehold Regional High
School District, Monmouth County,

Respondent.

The record of this emergent matter and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed and considered.

Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 N.J. 126, 132-34 (1982) and codified at N.J.A.C. 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the Office of Administrative Law with such proceedings as the parties and the ALJ deem necessary to bring it to closure.¹

IT IS SO ORDERED.



COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2025
Date of Mailing: June 24, 2025

¹ If petitioner does not wish to pursue a challenge to the other consequences of the discipline imposed on him, he may notify the ALJ and the file may be returned to the agency.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF

OAL DKT. NO. EDU 10825-25

AGENCY DKT. NO. 191-6/25

A.A.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
FREEHOLD REGIONAL SCHOOL DISTRICT,**

Respondent.

E. Carlton Kromer, Esq., for petitioner (Kromer Law Firm, LLC, attorneys)

Andrew Li, Esq., for respondent (Comegno Law Group, P.C., attorneys)

BEFORE **DEIRDRE HARTMAN-ZOHLMAN, ALJ:**

STATEMENT OF THE CASE

A.A., a Freehold Regional High School senior, challenges his exclusion from participation in graduation on June 25, 2025. Can the BOE exclude A.A. from participating in graduation? Yes. A BOE's decision cannot be upset unless "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

PROCEDURAL HISTORY

On June 4, 2025, A.A. brought an eight-and-one-half-inch folding knife to school. On June 5, 2025, the District placed A.A. on a ten-day out-of-school suspension, followed by forty-five days of home instruction, and excluded him from school activities, including his high school graduation on June 25, 2025.

On June 17, 2025, A.A. filed a petition of appeal and a motion for emergent relief with the Office of Controversies and Disputes of the New Jersey Department of Education (DOE). On June 18, 2025, the petition of appeal and motion for emergent relief were transmitted to the Office of Administrative Law (OAL) under N.J.A.C. 6A:3-1.6(c)(3), where they were filed as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On June 19, 2025, the BOE emailed its response to the petitioner's request for emergent relief. The appeal and motion for emergent relief were heard on June 23, 2025, and I closed the record.

FINDINGS OF FACT

Based on the arguments of the parties, together with the documents submitted, I **FIND** the following as **FACT**:

1. A.A. is a senior at the Freehold Regional High School. (P-6.)
2. On June 4, 2025, A.A. admittedly brought a weapon in the form of an eight-and-one-half-inch folding knife to school.¹ (P-6.)²
3. Weapons are prohibited from school under District policy, District regulations, and the student discipline code of conduct. (R-8 through R-12.)

¹ A.A. asserts that he did so inadvertently. I do not find this material to the analysis.

² The parties' exhibits were initially labeled alphabetically. Consistent with the OAL Practice Manual, the exhibits were relabeled numerically, with each document reassigned a corresponding number, but the pagination was not changed.

4. On June 5, 2025, A.A. was placed on a ten-day out-of-school suspension, followed by home instruction for forty-five days, and excluded from all school activities for the remainder of the school year, including his high school graduation on June 25, 2025.
5. A.A. has been diagnosed with attention deficit/hyperactivity disorder and attention deficit disorder. A manifestation meeting was held on June 4, 2025, and a determination made that A.A.'s behavior was not a manifestation of his disability. (R-6.)
6. According to the District regulation and student discipline policy/code of conduct, the board may deny participation in extracurricular activities, including graduation. Specifically, the District's policy and regulation state that it can deny participation in "extra-curricular activities, school functions, sports, graduation exercises, or other privileges as disciplinary sanctions when designed to maintain the order and integrity of the school environment." (R-11; R-12.)
7. In 2022, A.A. was found in violation of school regulation and policy for possessing a weapon in school and was issued a ten-day out-of-school suspension.³ (R-14.)

CONCLUSIONS OF LAW

When the subject matter of a controversy is an action by a board of education, the petitioner may file "a separate motion for emergent relief . . . pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). Here, A.A. has initiated due-process proceedings challenging his exclusion from graduation.

³ According to A.A. this was a "gel gun." (R-14.)

The standards for granting emergent relief are outlined in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6(b). The petitioner bears the burden of proving all four prongs of the Crowe test stated below:

1. Petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. Petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and the interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

1. Irreparable harm

As the New Jersey Supreme Court explained in Crowe, “[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm.” Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Indeed, the purpose of emergent relief is to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Ibid. (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854)).

“Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries.” Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). “More than a risk of irreparable harm must be demonstrated.” Cont'l Grp., Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (3d Cir. 1980). “The requisite for injunctive relief has been characterized as a ‘clear showing of immediate irreparable injury’ . . . or a ‘presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a

future invasion of rights, be those rights protected by statute or by the common law.” Ibid. (citations omitted).

As to the first requirement, there are a significant number of cases holding that a prohibition from attending a graduation ceremony or other similar events does not, in and of itself, rise to the necessary level of irreparable harm to warrant the extraordinary remedy being requested. Nevertheless, the Commissioner has recently pointed out that there is no adequate after-the-fact remedy that can adequately redress the intangibles of a lost experience after the event is over.

The real issue in a case such as this is whether the petitioner is entitled to participate in the graduation ceremony. It is only where the petitioner can show such entitlement and is being prevented from participation that he is being irreparably harmed. Therefore, the key issue is whether he can show a likelihood of success on the merits. In the absence of a showing of a likelihood of success on the merits, I **CONCLUDE** that petitioner has failed to establish irreparable harm in this case.

2. Settled Legal Right

N.J.S.A. 18A:37-2 grants a local board of education authority to impose discipline, including suspension and expulsion, upon any willfully disobedient student. However, a local board of education’s discretionary authority is only entitled to a presumption of correctness and should not be disturbed unless there is an affirmative showing that the decision was “patently arbitrary, without rational basis or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

As to the requirement that the right underlying the claim of a requesting party must be settled, it is clear that each school district is obligated to provide a thorough and efficient system of education to all children residing in its school district. N.J. Const. (1947), art. VIII, ¶ 1; N.J.S.A. 18A:33-1. To carry out this policy, local boards of education have been granted discretionary authority at N.J.S.A. 18A:11-1(c) and (d) to adopt rules for the management of the public schools of the district, and to perform all acts and do all things necessary for the lawful and proper conduct of the public schools of the district.

In general, a board of education's actions are entitled to a presumption of lawfulness and good faith. Where board actions are challenged, the challenger bears the burden of proving that such actions were unlawful, arbitrary, capricious or unreasonable. Schuster v. Bd. of Educ. of Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schnick v. Westwood Bd. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. Bd. of Educ. of N. Bergen Twp., 73 N.J. Super. 40 (App. Div. 1962)). The "arbitrary, capricious and unreasonable" standard of review imposes a heavy burden on challengers of board actions. This standard has been defined by the New Jersey courts as having no rational basis. Piccoli v. Bd. of Educ. of Ramapo Indian Hills Reg'l Sch. Dist., EDU 1839-98 (January 22, 1999) (citing Bayshore Sewage Co. v. Dep't of Env'tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974)), adopted, Comm'r (March 10, 1999) <<http://lawlibrary.rutgers.edu/oal/search.shtml>>.

In the absence of a clear showing of abuse of discretion, the Commissioner of Education will not substitute his or her own judgment for that of the board of education. Massaro v. Bd. of Educ. of Bergenfield, 1965 S.L.D. 84, 85. In Kopera, 60 N.J. Super. at 294, the Appellate Division noted "the well established rule that action of the local board [of education] which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives."

In this case, under the regulations and student discipline policy/code of conduct the board may deny participation in extracurricular activities, including graduation. Specifically, the District's policy and regulation state that it can deny participation in "extra-curricular activities, school functions, sports, graduation exercises, or other privileges as disciplinary sanctions when designed to maintain the order and integrity of the school environment." Petitioner argues that the sanction of missing graduation is not necessary to "maintain the order and integrity of the school environment." I disagree.

3. Likelihood of Success on the Merits

Petitioner has not demonstrated that he is likely to succeed on the merits of the underlying claim. Under this emergent-relief prong, "a plaintiff must make a preliminary

showing of a reasonable probability of ultimate success on the merits.” Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically “‘involves a prediction of the probable outcome of the case’ based on each party’s initial proofs, usually limited to documents.” Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)).

Based on the evidence submitted, I cannot conclude that the actions of the school district in imposing discipline upon A.A. were arbitrary, without a rational basis, or induced by improper motives. This was the second time that A.A. was in possession of a weapon in school. Notably, A.A. did not brandish the weapons, threaten anyone, or cause violence in any manner. However, I cannot find that it is arbitrary, capricious, without a rational basis, or induced by improper motives to deny him the ability to attend graduation for his possession of a weapon for a second time. This decision is within the discretion of the board, and there is not enough objective evidence in the record before me upon which I can base a conclusion that it is arbitrary, capricious, without a rational basis, or induced by improper motives. There is no question that graduation is a privilege. Under the clearly enunciated regulations and policies of the District, withholding such privileges may be a necessary disciplinary sanction designed to maintain the order and integrity of the school environment. Accordingly, I **CONCLUDE** that the District’s decision to deny A.A.’s attendance at graduation was not arbitrary, capricious, or unreasonable.

4. **Balancing the Equities**

The fourth and final emergent-relief standard involves “the relative hardship to the parties in granting or denying relief.” Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

Finally, I **CONCLUDE** that A.A. has failed to show that when the equities and interests of the parties are balanced, A.A. will suffer greater harm than the respondent will suffer if the requested relief is not granted. While A.A. and his family have a personal stake in seeing A.A. participate in the graduation ceremony, the school district also has

an important interest in seeing that its disciplinary policies are enforced. If those policies are disregarded without clear justification, it will send a message to the students that they may disregard those policies and avoid the consequences. Such a message will clearly damage the efforts of the school district to maintain the order and integrity of the school environment.

Based upon the foregoing, I **CONCLUDE** there is a rational basis for the respondent's action and that the right underlying petitioner's claim is settled against the petitioner's position.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that petitioner's request for emergency relief is hereby **DENIED**.

This order on application for emergency relief may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days, this recommended decision shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

June 24, 2025

DATE



DEIRDRE HARTMAN-ZOHLMAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

DHZ/jm

APPENDIX

Exhibits

For Petitioner:

- P-1 Photograph
- P-2 Sketch
- P-3 Sketch
- P-4 Photograph
- P-5 Photograph
- P-6 Verified petition
- P-7 Supplemental Certification of A.A.

For Respondent:

- R-1 Photographs
- R-2 Witness statement, Todd Ertel
- R-3 Incident report
- R-4 Video screenshot
- R-5 Statements
- R-6 Manifestation determination letter
- R-7 Letter, dated June 5, 2025
- R-8 District Policy 8467
- R-9 District Policy 5600
- R-10 District Regulation 8467
- R-11 District Regulation 5600
- R-12 Student Handbook, privilege section
- R-13 A.A.'s incident report list for all school years
- R-14 Document, re: September 16, 2022, incident
- R-15 Letter, dated September 30, 2022
- R-16 Psychiatric evaluation, dated September 24, 2015
- R-17 Certification of Michael Mendes
- R-18 Supplemental Certification of Michael Mendes